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CHAPTER 23

AGRICULTURAL AND WILDLIFE DAMAGE PREVENTION ACT

Sunset Act. — See Section 63-55-204 for the repeal date of this chapter.

Section	Short title.	Section	
4-23-1.	Purpose declaration.	4-23-7.	Annual fees on sheep, goats, cattle and turkeys — Determination by board — Reports and payments.
4-23-3.	Definitions.		
4-23-4.	Agricultural and Wildlife Damage Prevention Board created — Composition — Appointment — Terms — Vacancies — Compensation.	4-23-7.5.	Agricultural and Wildlife Damage Prevention Account.
		4-23-8.	Proceeds of sheep fee — Refund of sheep fees — Annual audit of books, records, and accounts.
4-23-5.	Board responsible for state agricultural and wildlife damage prevention policy — Adoption of regulations authorized — Board to specify programs to prevent damage to agricultural interests — Board to specify methods to control predators and depre-dating birds and animals.	4-23-9.	Annual budget requests — Relation to amount of fees and supplemental contributions deposited in Agricultural and Wildlife Damage Prevention Account — Commissioner to certify amount deposited.
4-23-6.	Department to issue licenses and permits — Department to issue aircraft use permits — Reports.	4-23-10.	Applicability of chapter.
		4-23-11.	Holding a raccoon or coyote in captivity prohibited — Penalty.

4-23-1. Short title.

This chapter shall be known and may be cited as the "Agricultural and Wildlife Damage Prevention Act."

History: C. 1953, 4-23-1, enacted by L. 1979, ch. 2, § 24.

Cross-References. — Counties may provide for destruction of gophers, squirrels or other

wild animals, § 17-5-223.

Dogs attacking domestic animals, right to kill, § 18-1-3.

4-23-2. Purpose declaration.

The Legislature finds and declares that it is important to the economy of the state to maintain agricultural production at its highest possible level and at the same time, to promote, to protect, and preserve the wildlife resources of the state.

History: C. 1953, 4-23-2, enacted by L. 1979, ch. 2, § 24.

4-23-3. Definitions.

As used in this chapter:

- (1) "Agricultural crops" means any product of cultivation;
- (2) "Board" means the Agricultural and Wildlife Damage Prevention Board;

(3) "Bounty" means the monetary compensation paid persons for the harvest of predatory or depredating animals;

(4) "Damage" means any injury or loss to livestock, poultry, agricultural crops, or wildlife inflicted by predatory or depredating animals or depredating birds;

(5) "Depredating animal" means a field mouse, gopher, ground squirrel, jack rabbit, raccoon, or prairie dog;

(6) "Depredating bird" means a Brewer's blackbird or starling;

(7) "Livestock" means cattle, horses, mules, sheep, goats, and swine;

(8) "Predatory animal" means any coyote; and

(9) "Wildlife" means any form of animal life generally living in a state of nature, except a predatory animal or a depredating animal or bird.

History: C. 1953, 4-23-3, enacted by L. 1979, ch. 2, § 24; 1989, ch. 109, § 1.

NOTES TO DECISIONS

Cited in Southern Utah Wilderness Alliance v. Thompson, 811 F. Supp. 635 (D. Utah 1993).

4-23-4. Agricultural and Wildlife Damage Prevention Board created — Composition — Appointment — Terms — Vacancies — Compensation.

There is created an Agricultural and Wildlife Damage Prevention Board composed of the commissioner and the director of the Division of Wildlife Resources, who shall serve, respectively, as the board's chairman and vice-chairman, together with seven other members appointed by the governor to four-year terms of office as follows:

- (1) one sheep producer representing wool growers of the state;
- (2) one cattle producer representing range cattle producers of the state;
- (3) one person from the United States Department of Agriculture;
- (4) one agricultural landowner representing agricultural landowners of the state;
- (5) one person representing wildlife interests in the state;
- (6) one person from the United States Forest Service; and
- (7) one person from the United States Bureau of Land Management.

Appointees' term of office shall commence June 1. Vacancies which occur on the board for any reason shall be filled by the governor for the unexpired term of the vacated member.

Attendance of five members at a duly called meeting shall constitute a quorum for the transaction of official business. The board shall convene at the times and places prescribed by the chairman or vice-chairman.

Members are entitled to per diem and expenses as established by the director of the Division of Finance.

History: C. 1953, 4-23-4, enacted by L. 1979, ch. 2, § 24; 1986, ch. 194, § 3; 1987, ch. 15, § 2.

Cross-References. — Per diem and expenses, §§ 63A-3-106, 63A-3-107.

4-23-5. Board responsible for state agricultural and wildlife damage prevention policy — Adoption of regulations authorized — Board to specify programs to prevent damage to agricultural interests — Board to specify methods to control predators and depredating birds and animals.

The board is responsible for the formulation of the agricultural and wildlife damage prevention policy of the state and in conjunction with its responsibility may, consistent with the Utah [Administrative] Rulemaking Act, adopt rules and regulations to implement its policy which shall be administered by the department.

In its policy deliberations the board shall:

(1) specify programs designed to prevent damage to livestock, poultry, and agricultural crops;

(2) specify methods for the prevention of damage and for the selective control of predators and depredating birds and animals including, but not limited to, hunting, trapping, chemical toxicants, and the use of aircraft.

The board may also:

(a) specify bounties on designated predatory animals and recommend procedures for the payment of bounty claims, recommend bounty districts, recommend persons not authorized to receive bounty, and recommend to the department other actions it deems advisable for the enforcement of its policies; and

(b) cooperate with federal, state, and local governments, educational institutions, and private persons or organizations, through agreement or otherwise, to effectuate its policies.

History: C. 1953, 4-23-5, enacted by L. 1979, ch. 2, § 24.

Cross-References. — Aircraft, use to take

wildlife restricted, § 23-20-12.

Utah Administrative Rulemaking Act, Title 63, Chapter 46a.

NOTES TO DECISIONS

Claim for bounty.

A bounty certificate was a claim against the state, not "salary or compensation of officers fixed by law," and was required to be submitted

to the board of examiners for its action. *Uintah State Bank v. Ajax*, 77 Utah 455, 297 P. 434 (1931).

COLLATERAL REFERENCES

Am. Jur. 2d. — 12 Am. Jur. 2d Bounties § 5.

C.J.S. — 11 C.J.S. Bounties § 13.

Key Numbers. — Bounties ⇌ 8.

4-23-6. Department to issue licenses and permits — Department to issue aircraft use permits — Reports.

The department is responsible for the issuance of permits and licenses for the purposes of the federal Fish and Wildlife Act of 1956. No state agency or private person shall use any aircraft for the prevention of damage without first obtaining a use permit from the department. A state agency which contem-

plates the use of aircraft for the protection of agricultural crops, livestock, poultry, or wildlife shall file an application with the department for an aircraft use permit to enable the agency to issue licenses to personnel within the agency charged with the responsibility to protect such resources. Persons who desire to use privately owned aircraft for the protection of land, water, crops, wildlife, or livestock shall not engage in any such protective activity without first obtaining an aircraft permit from the department. Agencies and private persons which obtain aircraft use permits shall file such reports with the department as it deems necessary in the administration of its licensing authority.

History: C. 1953, 4-23-6, enacted by L. 1979, ch. 2, § 24.

Federal Law. — The Fish and Wildlife Act of 1956 is 16 U.S.C. § 742a et seq.

4-23-7. Annual fees on sheep, goats, cattle and turkeys — Determination by board — Reports and payments.

(1) To assist the department in meeting the annual expense of administering this chapter, the following annual fees are imposed upon animals owned by persons whose interests this chapter is designed to protect:

Sheep and goats (except dairy goats or feeder lambs confined on the farm) at least \$.60 but not more than \$ 1 per head

Breeding cattle (except dairy cattle and those cattle confined in feedlots) at least \$.17 but not more than \$.50 per head

Turkeys (breeding stock only) at least \$.05 but not more than \$.25 per head

The amount of the fees imposed upon each category of animals specified in this section shall be determined by the board annually on or before July 1 of each year.

(2) Before January 1 of each year the commissioner shall mail to each owner of animals specified in this section a reporting form prepared by the commissioner. The form shall require sufficient information on the type and number of animals and indicate the fee imposed for each category of animals for the current year.

(3) Each owner shall file the completed form and the appropriate fee with the commissioner of agriculture before April 1 of each year.

(4) If any person who receives the reporting form fails to return the completed form and the imposed fee as required, the commissioner is authorized to commence suit through the office of the attorney general of the state of Utah, in a court of competent jurisdiction, to collect the imposed fee, the amount of which shall be as determined by the commissioner.

History: C. 1953, 4-23-7, enacted by L. 1979, ch. 2, § 24; 1982, ch. 3, § 1; 1983, ch. 125, § 1; 1984 (3rd S.S.), ch. 1, § 1.

4-23-7.5. Agricultural and Wildlife Damage Prevention Account.

(1) There is created in the General Fund a restricted account known as the Agricultural and Wildlife Damage Prevention Account.

(2) Money received under Section 4-23-7 shall be deposited by the commissioner of agriculture in the Agricultural and Wildlife Damage Prevention Account to be appropriated for the purposes provided in this chapter.

(3) Any supplemental contributions received by the department from livestock owners for predator control programs shall be deposited into the Agricultural and Wildlife Damage Prevention Account.

History: C. 1953, 4-23-7.5, enacted by L. 1984 (3rd S.S.), ch. 1, § 2; 1994, ch. 98, § 1. **Amendment Notes.** — The 1994 amend-

ment, effective May 2, 1994, divided the section into Subsections (1) and (2), making stylistic changes, and added Subsection (3).

4-23-8. Proceeds of sheep fee — Refund of sheep fees — Annual audit of books, records, and accounts.

The commissioner is authorized to expend an amount not to exceed the equivalent of 16 cents per head each year from the proceeds collected from the fee imposed on sheep for the promotion, advancement, and protection of the sheep interests of the state. All costs to promote or advance sheep interests shall be deducted from the total revenue collected prior to calculating the annual budget request to be made by the Division of Wildlife Resources as specified in Section 4-23-9. A sheep fee is refundable in an amount equal to that part of the fee used to promote, advance, or protect sheep interests. No claim for refund is allowed however, unless filed with the department on or before January 1 of the year immediately succeeding the year for which the fee was paid. Each claim for refund shall be certified by the department to the state treasurer for payment from the Agricultural and Wildlife Damage Prevention Account.

Any expense incurred by the department in administering refunds shall be paid from funds allocated for the promotion, advancement, and protection of the sheep interests of the state.

The books, records, and accounts of the Utah Woolgrowers Association or any other organization which receives funds from the agricultural and wildlife damage prevention account for the purpose of promoting, advancing, or protecting the sheep interests of the state shall be audited at least once annually by a licensed accountant selected by the commission and approved by the state auditor. The results of such audit shall be submitted to the commissioner.

History: C. 1953, 4-23-8, enacted by L. 1979, ch. 2, § 24; 1982, ch. 3, § 2.

4-23-9. Annual budget requests — Relation to amount of fees and supplemental contributions deposited in Agricultural and Wildlife Damage Prevention Account — Commissioner to certify amount deposited.

(1) (a) The department in its annual budget request shall include a request for funds from the General Fund equal in amount to 120% of the amount of the fees and supplemental contributions deposited in the Agricultural and Wildlife and Damage Prevention Account during the previous fiscal year.

(b) The funds shall be used for the purposes provided in this chapter.

(2) (a) The Division of Wildlife Resources in its annual budget request shall include a request for funds from the General Fund equal to 25% of the amount of the fees and supplemental contributions deposited in the Agricultural and Wildlife Damage Prevention Account during the previous fiscal year.

(b) The funds shall be used for the purposes provided in this chapter.

(c) The commissioner shall certify annually to the director of the Division of Wildlife Resources before September 1, the amount of revenue deposited to the Agricultural and Wildlife Damage Prevention Account during the previous fiscal year.

History: C. 1953, 4-23-9, enacted by L. 1979, ch. 2, § 24; 1994, ch. 98, § 2.

Amendment Notes. — The 1994 amendment, effective May 2, 1994, divided the section into subsections, substituting Subsections (1)(b) and (2)(b) for “which shall be deposited in the Agricultural and Wildlife Damage Preven-

tion Account”; substituted “120% of the amount of the fees and supplemental contributions” for “the amount of revenue” in Subsection (1)(a); inserted “of the fees and supplemental contributions” in Subsection (2)(a); and made a stylistic change in Subsection (2)(c).

4-23-10. Applicability of chapter.

This chapter, unless contrary to a federal statute, shall apply to all federal, state, and private lands.

History: C. 1953, 4-23-10, enacted by L. 1979, ch. 2, § 24.

NOTES TO DECISIONS

Cited in Southern Utah Wilderness Alliance v. Thompson, 811 F. Supp. 635 (D. Utah 1993).

4-23-11. Holding a raccoon or coyote in captivity prohibited — Penalty.

(1) No person may hold in captivity a raccoon or coyote, except as provided by rules of the Agricultural and Wildlife Damage Prevention Board.

(2) The Division of Wildlife Resources, with the cooperation of the Department of Agriculture and the Department of Health, shall enforce this section.

(3) Any violation of this section is a class B misdemeanor.

(4) This section does not prohibit a person from continuing to keep a raccoon or coyote that he owns as of the effective date of this act.

History: C. 1953, 4-23-11, enacted by L. 1990, ch. 40, § 1.

Meaning of "this act." — The term "this act" means Laws 1990, ch. 40, which enacted

this section and was effective April 23, 1990.

Cross-References. — Sentencing for misdemeanors, §§ 76-3-201, 76-3-204, 76-3-301.

CHAPTER 24

UTAH LIVESTOCK BRAND AND ANTI-THEFT ACT

Section		Section	
4-24-1.	Short title.		Application for brand inspection — Time and place of inspection.
4-24-2.	Definitions.		— Exception — Application for brand inspection — Time and place of inspection.
4-24-3.	Department authorized to make and enforce regulations.	4-24-15.	Movement across state line — Brand inspection required — Exception — Application for brand inspection — Time and place of inspection.
4-24-4.	Livestock Brand Board created — Composition — Terms — Removal — Quorum for transaction of business — Compensation — Duties.	4-24-16.	Transportation of cattle and calves between brand inspection districts — Brand inspection required — Exception — No fee for reinspection — Application for brand inspection — Time and place of inspection — Applicability to horses and mules.
4-24-5.	Central Brand and Mark Registry — Division of state into mark districts — Identical or confusingly similar brands — Publication of registered brands and marks.	4-24-17.	Transport of sheep, cattle, horses, or mules — Brand certificate or other evidence of ownership required — Transit permit — Contents.
4-24-6.	State may be divided into brand inspection districts — Description filed with county clerk and sheriff.	4-24-18.	Hides and pelts — Bill of sale to accompany purchase — Purchaser to maintain records — Hides and records examination and inspection.
4-24-7.	Recordation of brand or mark.	4-24-19.	Livestock markets — Records to be maintained — Retention of records — Schedule of fees and charges to be posted.
4-24-8.	Fees for recordation, transfer, renewal, and certified copies of brands and marks.	4-24-20.	Livestock sold at market to be brand inspected — Proceeds of sale may be withheld — Distribution of withheld proceeds — Effect of receipt of proceeds by department — Deposit of proceeds — Use of proceeds if ownership not established.
4-24-9.	Effect of recorded brand or mark — Transfer — Reservation of certain brands.	4-24-21.	Brand inspection fees.
4-24-10.	Livestock on open range or outside enclosure to be marked or branded — Cattle upon transfer of ownership to be marked or branded — Exceptions.	4-24-22.	Travel permit in lieu of brand inspection certificate — Fees — Permit to accompany animal.
4-24-11.	Certificate of brand inspection necessary to effectuate change of ownership.	4-24-23.	Lifetime permit in lieu of brand inspection certificate — Fees — Permit to accompany animal — Transfer.
4-24-12.	Livestock — Verification of ownership through brand inspection — Issuance of certificate of brand inspection — Brand inspector may demand evidence of ownership.		
4-24-13.	Prohibition against slaughter without a certificate of brand inspection — Exceptions.		
4-24-14.	Transportation by air or rail — Brand inspection required —		

Section 4-24-24.	Utah Livestock Brand and Anti-Theft Fund created — Deposit of fees.	Section 4-24-28.	Enforcement — Brand inspector's powers delineated.
4-24-25.	Unlawful acts specified — Allegation concerning evidence of ownership relative to hides.	4-24-29.	Commissioner authorized to cooperate with local governments, other states, or federal government in enforcement.
4-24-26.	Use of vehicle to transport stolen livestock prohibited — Vehicle subject to seizure and sale — Procedure for sale — Defense.	4-24-30.	Commissioner to appoint supervisor for brand inspection — Appointment subject to approval — Salary.
4-24-27.	Theft of livestock — Treble damages may be awarded in civil action.	4-24-31.	Repealed.

4-24-1. Short title.

This chapter shall be known and may be cited as the "Utah Livestock Brand and Anti-theft Act."

History: C. 1953, 4-24-1, enacted by L. 1979, ch. 2, § 25.

COLLATERAL REFERENCES

Am. Jur. 2d. — 4 Am. Jur. 2d Animals §§ 8, 9.

C.J.S. — 3A C.J.S. Animals §§ 15 to 30.
Key Numbers. — Animals ☞ 5 to 13.

4-24-2. Definitions.

As used in this chapter:

- (1) "Brand" means any identifiable mark applied to livestock which is intended to show ownership;
- (2) "Carcass" means any part of the body of an animal, including but not limited to hides, entrails, and edible meats;
- (3) "Hide" means any skins or wool removed from livestock;
- (4) "Livestock" means cattle, calves, horses, mules, sheep, goats, or hogs;
- (5) "Livestock market" means a public market place consisting of pens or other enclosures where cattle, calves, horses, or mules are received on consignment and kept for subsequent sale, either through public auction or private sale; but it does not mean:
 - (a) a place used solely for liquidation of livestock by a farmer, dairyman, livestock breeder, or feeder who is going out of business; or
 - (b) a place where an association of livestock breeders under its own management, offers registered livestock or breeding sires for sale and assumes all responsibility for the sale, guarantees title to the livestock or sires sold, and arranges with the department for brand inspection of all animals sold.
- (6) "Mark" means any dulap, waddle, or cutting and shaping of the ears or bricket area of livestock which is intended to show ownership; and
- (7) "Slaughterhouse" means any building, plant, or establishment where animals are killed, dressed, or processed and their meat or meat products offered for sale for human consumption.

History: C. 1953, 4-24-2, enacted by L. 1979, ch. 2, § 25.

4-24-3. Department authorized to make and enforce regulations.

The department is authorized, subject to the Utah [Administrative] Rulemaking Act, to make and enforce such regulations as in its judgment are necessary to administer and enforce this chapter.

History: C. 1953, 4-24-3, enacted by L. 1979, ch. 2, § 25.

Cross-References. — Utah Administrative Rulemaking Act, Title 63, Chapter 46a.

4-24-4. Livestock Brand Board created — Composition — Terms — Removal — Quorum for transaction of business — Compensation — Duties.

(1) There is created the Livestock Brand Board consisting of seven members appointed to three year terms of office by the governor as follows:

(a) four cattle ranchers recommended by the Utah Cattlemen's Association, one of whom shall be a feeder operator;

(b) one dairyman recommended by the Utah Dairymen's Association;

(c) one livestock market operator recommended jointly by the Utah Cattlemen's Association and the Utah Dairymen's Association and the Livestock Market Association; and

(d) one horse breeder recommended by the Utah Horse Council.

(2) If a nominee is rejected by the governor, the recommending association shall submit another nominee.

(3) A member may, at the discretion of the governor, be removed at the request of the association that recommended the appointment. One member elected by the board shall serve as chairman for a term of one year and be responsible for the call and conduct of meetings of the livestock brand board. Attendance of a simple majority of the members at a duly called meeting shall constitute a quorum for the transaction of official business. Members are entitled to per diem and expenses as established in Sections 63A-3-106 and 63A-3-107.

(4) The Livestock Brand Board with the cooperation of the department shall direct the procedures and policies to be followed in administering and enforcing this chapter.

History: C. 1953, 4-24-4, enacted by L. 1979, ch. 2, § 25; 1993, ch. 4, § 4; 1994, ch. 12, § 4.

Amendment Notes. — The 1993 amendment, effective May 3, 1993, added the (1) to (3) designations, redesignated former Subsections (1) to (4) as Subsections (1)(a) to (d), substituted "as established in Sections 63-1-14.5 and 63-1-

15" for "in accordance with Section 63-2-15" in Subsection (3), and made stylistic changes.

The 1994 amendment, effective May 2, 1994, corrected the references at the end of Subsection (3).

Sunset Act. — See Section 63-55-204 for the repeal date of the Livestock Brand Board.

4-24-5. Central Brand and Mark Registry — Division of state into mark districts — Identical or confusingly similar brands — Publication of registered brands and marks.

(1) The department shall maintain a central Brand and Mark Registry which shall list each brand or mark recorded in this state. For each brand or mark registered the list shall specify:

- (a) the name and address of the registrant;
- (b) a facsimile of the brand recorded or a diagram showing the kind of mark recorded;
- (c) the location of the brand or mark upon the animal; and
- (d) the date the brand or mark is filed in the registry.

(2) The commissioner may divide the state into districts for the purpose of recording marks but no mark which in the opinion of the commissioner is identical or confusingly similar to a mark previously recorded in a district shall be recorded.

(3) No brand which in the opinion of the commissioner is identical or confusingly similar to a brand previously filed in the central brand and mark registry shall be recorded. If it appears that two or more identical or confusingly similar brands or marks have been recorded, the brand or mark first recorded shall prevail over a later conflicting brand or mark; in which event, the later brand or mark shall be cancelled and all recording fees refunded to the owner.

(4) The commissioner shall publish from time to time a list of all brands and marks recorded in the central Brand and Mark Registry and may issue supplements to such publication containing additional brands and marks or changes in ownership of brands and marks recorded after the last publication. The brand book shall contain a facsimile of all brands and marks recorded together with the owner's name and address. The commissioner shall send one copy of the brand book and each supplement to each brand inspector, county clerk, county sheriff, livestock organization, and any other person deemed appropriate. Brand books and supplements shall be available to the public at the cost of printing and distribution per book or supplement.

History: C. 1953, 4-24-5, enacted by L.
1979, ch. 2, § 25.

4-24-6. State may be divided into brand inspection districts — Description filed with county clerk and sheriff.

The commissioner, to facilitate and improve brand inspection, may divide the state into brand inspection districts. A description covering each district shall be filed by the department with each county clerk and county sheriff in the state. District boundaries may be changed as considered necessary by the commissioner, with the approval of the Livestock Brand Board. Brand inspection stations within brand inspection districts may be located and established by the commissioner to assist in the enforcement of this chapter.

History: C. 1953, 4-24-6, enacted by L. 1979, ch. 2, § 25; 1988, ch. 42, § 2.

4-24-7. Recordation of brand or mark.

(1) Application for a recorded brand or mark shall be made to the department upon forms prescribed and furnished by it. The application shall contain such information as the commissioner prescribes. No application shall be approved without payment of the appropriate recording fee. Upon receipt of a proper application, payment of the recording fee, and recordation of the brand or mark in the central Brand or Mark Registry of the department, the commissioner shall issue the applicant a certified copy of recording which entitles the applicant to the exclusive use of the brand or mark recorded.

(2) Each recorded brand or mark filed with the central Brand and Mark Registry shall expire during the calendar year 1980, and during each fifth year thereafter. The department shall give notice in writing to all persons who are owners of recorded brands and marks within a reasonable time prior to the date of expiration of recordation. Brand or mark renewal is effected by filing an appropriate application with the department together with payment of the renewal fee. A recorded brand or mark, not timely renewed, shall lapse and be removed from the central Brand and Mark Registry.

History: C. 1953, 4-24-7, enacted by L. 1979, ch. 2, § 25.

NOTES TO DECISIONS

Effect of recordation.

Recording of sheep brand under former statute was not prima facie evidence of ownership

in one who obtained record. *Smith v. Cummings*, 39 Utah 356, 117 P. 38, 1913E Ann. Cas. 129 (1911).

4-24-8. Fees for recordation, transfer, renewal, and certified copies of brands and marks.

The department, with the approval of the Livestock Brand Board, shall charge and collect fees for the recordation, transfer, and renewal of any brand or mark in each position, and may charge a fee for a certified copy of the recordation. The fees shall be determined by the department pursuant to Subsection 4-2-2(2).

History: C. 1953, 4-24-8, enacted by L. 1979, ch. 2, § 25; 1984 (2nd S.S.), ch. 15, § 15; 1985, ch. 130, § 11.

4-24-9. Effect of recorded brand or mark — Transfer — Reservation of certain brands.

The owner of a recorded brand or mark has a vested property right in it which is transferable by a duly acknowledged instrument; provided, that a transferee has no rights in the brand or mark until the instrument of transfer is recorded with the department. No person however, other than a member of the Ute Indian Tribe has any vested property right in the brand "ID" which is reserved exclusively for use by members of the Ute Indian Tribe on the Uintah

and Ouray Reservation and no person other than a member of the Navajo Indian Tribe has any vested right in the brand "— N" (Bar N) which is reserved exclusively for use by members of the Navajo Indian Tribe on the Navajo Indian Reservation so long as it appears on the left shoulder of the animal branded. The left jaw of cattle is reserved exclusively for use by the department to identify diseased cattle.

History: C. 1953, 4-24-9, enacted by L.
1979, ch. 2, § 25; 1983, ch. 4, § 1.

4-24-10. Livestock on open range or outside enclosure to be marked or branded — Cattle upon transfer of ownership to be marked or branded — Exceptions.

(1) No livestock, except swine, goats, and unweaned calves or colts, shall forage upon an open range in this state or outside an enclosure unless they bear a brand or mark recorded in accordance of [with] this chapter.

(2) All cattle, upon sale or other transfer of ownership, shall be branded or marked with the recorded brand or mark of the new owner within 30 days after transfer of ownership; provided, that no branding or marking upon change of ownership is required within the 30-day period for unweaned calves, registered or certified cattle, youth project calves if the number transferred is less than five, or for marked dairy cattle held on farms.

History: C. 1953, 4-24-10, enacted by L.
1979, ch. 2, § 25.

4-24-11. Certificate of brand inspection necessary to effectuate change of ownership.

The ownership of cattle, horses, or mules shall not be transferred to any other person, through sale or otherwise, without a certificate of brand inspection issued by a department brand inspector.

History: C. 1953, 4-24-11, enacted by L.
1979, ch. 2, § 25.

NOTES TO DECISIONS

ANALYSIS

Applicability.
Failure to obtain certificate.

Applicability.

The livestock brand law was aimed at the theft of livestock within the state and was designed to impede the sale of stolen animals; it does not appear that the Legislature intended the statute to apply to sales under contracts made in good faith. *Wilson v. Burrows*, 27 Utah

2d 436, 497 P.2d 240 (1972).

Failure to obtain certificate.

Seller of cattle who gave buyer a bill of sale but kept the certificate of registration, then found buyer's check was worthless and sought to replevy the cattle, would prevail over a third party who purchased the cattle in good faith from the buyer, because possession of the certificate was prima facie evidence of ownership. *Witherspoon v. Yeck*, 551 P.2d 1258 (Utah 1976).

4-24-12. Livestock — Verification of ownership through brand inspection — Issuance of certificate of brand inspection — Brand inspector may demand evidence of ownership.

Verification of livestock ownership through brand inspection shall be conducted during daylight hours by an agent of the department known as a brand inspector. After making the brand inspection, the brand inspector, if satisfied that the livestock subject to inspection bears registered brands or marks owned by the owner of the livestock, shall issue a certificate of brand inspection to the owner or owner's agent. The brand inspector shall record the number, sex, breed, and brand or mark on each animal inspected together with the owner's name. If any livestock subject to inspection bears a brand or mark other than that of the owner or, if no brand or mark appears on such livestock, the brand inspector may demand evidence of ownership such as a bill of sale or other evidence of ownership before issuing a certificate of brand inspection.

History: C. 1953, 4-24-12, enacted by L.
1979, ch. 2, § 25.

4-24-13. Prohibition against slaughter without a certificate of brand inspection — Exceptions.

No person shall slaughter, except for such person's own use in compliance with Subsection 4-32-4(2), any cattle, calves, horses, or mules without a certificate of brand inspection.

History: C. 1953, 4-24-13, enacted by L.
1979, ch. 2, § 25.

4-24-14. Transportation by air or rail — Brand inspection required — Application for brand inspection — Time and place of inspection.

No person shall offer, or railroad or airline company accept, any cattle, calves, horses, or mules for transport until they have been brand inspected unless the department approves their transport subject to brand inspection at some point designated along the transport route. Before livestock is transported by rail or air, the shipper shall make application to the department to inspect the brands and marks of the animals subject to shipment. The application shall advise the department of the time and place where the animals may be inspected. Cattle, calves, horses, or mules transported by rail or air shall either be brand inspected at a stockyard at the initial point of shipment or, if approved by the department, at a point or station along the transport route. Upon receipt of an application for brand inspection, the department shall conduct the inspection at the time and place specified in the application or at such other time and place as the department approves.

History: C. 1953, 4-24-14, enacted by L.
1979, ch. 2, § 25.

4-24-15. Movement across state line — Brand inspection required — Exception — Application for brand inspection — Time and place of inspection.

No person shall drive any cattle, calves, horses, or mules from any place within this state to a place outside this state until they have been brand inspected; provided, that this section is inapplicable to such animals if they customarily forage on an open range which transgresses the Utah state line and that of an adjoining state. Before any of these animals are driven beyond the Utah state line, the owner or person responsible for the drive shall make application to the department to inspect the brands and marks of the animals to be moved. The application shall advise the department of the time and place where the animals may be inspected. Upon receipt of an application for brand inspection, the department shall conduct the inspection at the time and place specified in the application or at such other time and place as the department approves.

History: C. 1953, 4-24-15, enacted by L. 1979, ch. 2, § 25.

4-24-16. Transportation of cattle and calves between brand inspection districts — Brand inspection required — Exception — No fee for reinspection — Application for brand inspection — Time and place of inspection — Applicability to horses and mules.

(1) A person may not transport any cattle or calves from a point within a brand inspection district to a point outside the district, except as provided in Subsection (2), until the cattle or calves have been brand inspected, unless the department approves their transport subject to brand inspection at some point designated along the transport route. A brand inspection fee is not required to be paid upon reinspection of cattle or calves being transported between districts from a summer or winter range or pasture if the cattle or calves were brand inspected in the district of origin. Before transport from one district to another, the owner or person responsible for the transport shall apply to the department to inspect the brands and marks of the animals to be moved. The application shall state the time and place where the animals may be inspected. Upon receipt of an application for brand inspection, the department shall conduct the inspection at the time and place specified in the application or at such other time and place as the department approves.

(2) Cattle or calves may be transported between brand inspection districts without brand inspection if they are destined for a livestock market in this state.

(3) Horses and mules may move within the state without a brand inspection, but a brand inspection is required on a change of ownership or to leave this state.

History: C. 1953, 4-24-16, enacted by L. 1979, ch. 2, § 25; 1986 (2nd S.S.), ch. 10, § 3; 1988, ch. 139, § 1.

4-24-17. Transport of sheep, cattle, horses, or mules — Brand certificate or other evidence of ownership required — Transit permit — Contents.

No person may transport any sheep, cattle, horses, or mules without having an official state brand certificate or other proof of ownership in his possession. Each person transporting livestock for another person shall have a transit permit signed by the owner or the owner's authorized agent specifying the name of the person driving the vehicle, date of transportation, place of origin or loading, destination, date of issuance, and number of head being transported.

History: C. 1953, 4-24-17, enacted by L. 1979, ch. 2, § 25; 1986 (2nd S.S.), ch. 10, § 4.

4-24-18. Hides and pelts — Bill of sale to accompany purchase — Purchaser to maintain records — Hides and records examination and inspection.

(1) Any person who buys a hide or pelt shall secure a bill of sale from the seller. The bill of sale shall be executed in duplicate; one copy being retained by the seller and the other by the buyer. The bill of sale shall specify the number of hides or pelts sold and the brand or mark borne by each hide and pelt.

(2) Each hide buyer within this state shall maintain a record specifying the name and address of the seller, date of purchase, and the brands or other identification found on the hides and pelts purchased. The hides and records of any hide buyer are subject to examination and inspection by the department at reasonable times and places.

History: C. 1953, 4-24-18, enacted by L. 1979, ch. 2, § 25.

4-24-19. Livestock markets — Records to be maintained — Retention of records — Schedule of fees and charges to be posted.

(1) Each owner or operator of a livestock market shall keep a record of:

(a) the date each consignment of livestock is received for sale together with the number of each type of livestock within such consignment;

(b) the name and address of each buyer;

(c) the date of sale and the number and species of livestock purchased by each buyer; and

(d) the brand or mark appearing on each animal at the time of sale to the buyer.

(2) The records mandated by this section shall be retained for a period of two years from the date on which the livestock market sold the livestock.

(3) A schedule of all fees and commission rates charged by the livestock market shall be posted in a conspicuous place on the premises of each market.

(4) A statement of the gross sales price, commission, and other fees charged for the sale of each consignment shall be available for inspection by the department, and a copy furnished the owner or consignor of the livestock.

History: C. 1953, 4-24-19, enacted by L. 1979, ch. 2, § 25.

4-24-20. Livestock sold at market to be brand inspected — Proceeds of sale may be withheld — Distribution of withheld proceeds — Effect of receipt of proceeds by department — Deposit of proceeds — Use of proceeds if ownership not established.

(1) Livestock shall not be sold at any livestock market until after they have been brand inspected by the department. Title to purchased livestock shall be furnished to the buyer by the livestock market.

(2) Upon notice from the department that a question exists concerning the ownership of consigned livestock, the operator of the livestock market or meat packing plant shall withhold the proceeds from the sale of the livestock for 60 days to allow the consignor of the questioned livestock to establish ownership. If the owner or consignor fails within 60 days to establish ownership to the satisfaction of the department, the proceeds of the sale shall be transmitted to the department. Receipt of the proceeds by the department shall relieve the livestock market or meat packing plant from further responsibility for the proceeds.

(3) Proceeds withheld under Subsection (2) shall be deposited in the Utah Livestock Brand and Anti-theft Restricted Account Fund in the General Fund. If ownership is not satisfactorily established within one year, the department shall use the proceeds for animal identification.

History: C. 1953, 4-24-20, enacted by L. 1979, ch. 2, § 25; 1988, ch. 139, § 2.

NOTES TO DECISIONS

Applicability.

In replevin action by livestock raiser to recover cattle sold at auction, former section of this title governed sale and not Chapter 2 of Uniform Commercial Code in view of § 70A-2-

102 which provides that Chapter 2 does not "impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers." Pugh v. Stratton, 22 Utah 2d 190, 450 P.2d 463 (1969).

4-24-21. Brand inspection fees.

The department with the approval of the Livestock Brand Board may set and collect a fee for the issuance of any certificate of brand inspection. Brand inspection fees incurred for the inspection of such animals at a livestock market may be withheld by the market and paid from the proceeds derived from their sale. The fee shall be determined by the department pursuant to Subsection 4-2-2(2).

History: C. 1953, 4-24-21, enacted by L. 1979, ch. 2, § 25; 1981, ch. 10, § 1; 1985, ch. 130, § 12.

4-24-22. Travel permit in lieu of brand inspection certificate — Fees — Permit to accompany animal.

The department may issue a permit upon the payment of a fee determined by the department pursuant to Subsection 4-2-2(2), in lieu of a certificate of brand inspection, for the transport of any show horse, show mule, or show cattle within or outside the state. The words "travel permit" shall be stamped or printed on the permit. A permit shall accompany each show animal while it is in transit and shall identify the animal to which it applies by age, sex, color, brand, mark, and scars. A travel permit is valid for the calendar year of the date of issuance, which date shall appear on the permit.

History: C. 1953, 4-24-22, enacted by L. 1979, ch. 2, § 25; 1984 (2nd S.S.), ch. 15, § 16; 1985, ch. 130, § 13.

4-24-23. Lifetime permit in lieu of brand inspection certificate — Fees — Permit to accompany animal — Transfer.

The department may issue a "lifetime" permit upon the payment of a fee determined by the department pursuant to Subsection 4-2-2(2), in lieu of a certificate of brand inspection, for the transport of any horse or mule within or outside the state. The words "lifetime travel permit" shall be stamped or printed on the permit. The permit shall accompany each horse or mule while it is in transit and shall identify the animal to which it applies by age, sex, color, brand, and scars. A lifetime transportation permit is valid for as long as the horse or mule to which it applies continues to be owned by the person to whom the permit is issued. A lifetime permit is transferable upon the transfer of ownership of such an animal, upon application for transfer and the payment of a permit transfer fee to the department in an amount determined by the department pursuant to Subsection 4-2-2(2).

History: C. 1953, 4-24-23, enacted by L. 1979, ch. 2, § 25; 1984 (2nd S.S.), ch. 15, § 17; 1985, ch. 130, § 14.

4-24-24. Utah Livestock Brand and Anti-Theft Fund created — Deposit of fees.

All fees collected by the department in the administration of this chapter shall be deposited in a restricted revenue fund account within the General Fund to be known as the "Utah Livestock Brand and Anti-Theft Fund."

History: C. 1953, 4-24-24, enacted by L. 1979, ch. 2, § 25.

4-24-25. Unlawful acts specified — Allegation concerning evidence of ownership relative to hides.

(1) It is unlawful for any person to:

(a) permit any cattle, calves, horses, mules, or sheep, except unweaned calves or colts, that are not branded or marked in accordance with this chapter, to forage upon an open range in this state or outside an enclosure;

(b) brand or mark any livestock with a brand or mark which is not a matter of record on the central brand and mark registry;

(c) obliterate, change, or remove a recorded brand or mark; or

(d) destroy, mutilate, or conceal any hide with intent to, or for the purpose of, removing evidence of ownership of the hide, or ownership of the animal from which the hide was removed.

(2) In any prosecution for violation of this section, the state need not allege the ownership of the hide, or the animal or carcass from which the hide was removed; the complaint or information being sufficient if it alleges that ownership is unknown and that the hide is not the property of the defendant.

History: C. 1953, 4-24-25, enacted by L. 1979, ch. 2, § 25.

NOTES TO DECISIONS

Evidence.

On trial for altering and defacing wool brand on sheep, where one of defendants took no part in branding, evidence that he purchased paint for other defendant was not sufficient to justify court in submitting question of his guilt to jury. *State v. Blank*, 43 Utah 211, 134 P. 735 (1913).

In prosecution for branding steer belonging to another with intent to steal it, question of intent to steal was properly submitted to jury, even though there was evidence that no at-

tempt had been made by anyone to obliterate owner's markings, that while steer's ear had been marked with defendant's slit, hole for ear tag was still present in ear, that owner's brand had been haired over, that steer was found in defendant's pasture contiguous to owner's property after having been missed for about seven months, and that fences were not in good state of repair. *State v. Jarrett*, 112 Utah 335, 187 P.2d 547 (1947).

4-24-26. Use of vehicle to transport stolen livestock prohibited — Vehicle subject to seizure and sale — Procedure for sale — Defense.

No person shall use any vehicle for the transportation of stolen livestock or carcasses. Any vehicle used in transporting stolen livestock or carcasses is subject to seizure and public sale by the sheriff of the county where it is found.

No sale shall be made, however, until written notice of the proposed sale is served upon the person in whose custody the vehicle is found. Such person has 10 days after service of the notice of proposed sale to respond to the notice, in which event, no sale shall be conducted until after the issue of ownership or any other issues are litigated in a court of competent jurisdiction. A stolen vehicle used for unlawful transportation is not subject to seizure and sale if the owner of the vehicle is not acting in concert with the thief.

History: C. 1953, 4-24-26, enacted by L. 1979, ch. 2, § 25.

4-24-27. Theft of livestock — Treble damages may be awarded in civil action.

Any person or persons convicted of the theft of livestock as set forth in Subsection 76-6-412[(1)](b)(iii) is liable for treble damages in a civil action.

History: C. 1953, 4-24-27, enacted by L. 1979, ch. 2, § 25.

4-24-28. Enforcement — Brand inspector's powers delineated.

(1) A brand inspector is empowered with the authority of a special function officer for the purpose of enforcing this chapter and such an inspector may, if deemed proper, stop any vehicle carrying livestock or livestock carcasses for the purpose of examining brands, marks, certificates of brand inspection, and bills of lading or bills of sale relating to the livestock in transit.

(2) Brand inspectors may enter any premises where livestock are kept or maintained for the purpose of examining brands or marks. If admittance is refused, the department may proceed immediately to obtain an ex parte warrant from the nearest court of competent jurisdiction to allow entry upon the premises for the purpose of examining brands or marks or other evidence of ownership.

History: C. 1953, 4-24-28, enacted by L. 1979, ch. 2, § 25; 1986 (2nd S.S.), ch. 10, § 5.

4-24-29. Commissioner authorized to cooperate with local governments, other states, or federal government in enforcement.

The commissioner is empowered with authority, if deemed necessary, to cooperate or enter into cooperative agreements with authorities in any city, town, or county within the state, or with federal authorities, or with authorities in another state for the purpose of securing assistance in the administration and enforcement of this chapter.

History: C. 1953, 4-24-29, enacted by L. 1979, ch. 2, § 25.

4-24-30. Commissioner to appoint supervisor for brand inspection — Appointment subject to approval — Salary.

The commissioner shall appoint a state supervisor for livestock brand inspection, but such appointment is subject to the approval of the Livestock Brand Board. The salary or compensation of the supervisor shall be fixed in accordance with standards adopted by the Department of Finance [Division of Finance].

History: C. 1953, 4-24-30, enacted by L. 1979, ch. 2, § 25.

4-24-31. Repealed.

Repeals. — Section 4-24-31 (L. 1979, ch. 2, § 25), making violation of the chapter a class

“B” misdemeanor, was repealed by Laws 1985, ch. 104, § 8.

CHAPTER 25**ESTRAYS AND TRESPASSING ANIMALS**

Section	Definition.	Section	
4-25-1.			in derogation of common law —
4-25-2.	County responsibility for estrays — Contracts with other local governments authorized.		Lawful fence to be specified by ordinance.
4-25-3.	Department authorized to make and enforce regulations.	4-25-8.	Owner liable for trespass of ani- mals — Exception — Interven- tion by county representative.
4-25-4.	Possession of estrays — Determi- nation and location of owner — Sale — Disposition of proceeds — Notice — Title of purchaser — Immunity from liability.	4-25-9.	Animals running at large — Pro- hibition — Limited exception.
4-25-5.	Report of estrays — Possession — Relief from liability.	4-25-10.	Bulls — Number required on range during breeding season.
4-25-6.	Compensation for care of estrays — Liability of county — Notice required.	4-25-11.	Determination and enforcement of bull running policy by range as- sociation.
4-25-7.	County legislative body autho- rized to adopt fence ordinance	4-25-12.	Permitting swine to trespass after notice — Class “C” misde- meanor.
		4-25-13.	Repealed.

4-25-1. Definition.

For the purpose of this chapter “estrays” means any unbranded sheep, cattle, horses, mules, or asses found running at large, or any branded sheep, cattle, horses, mules, or asses found running at large whose owner cannot be found after reasonable search, or any swine found running at large whose owner cannot be found after reasonable search; but it does not mean nor include any unweaned animal specified in this section that is running with its mother.

History: C. 1953, 4-25-1, enacted by L. 1979, ch. 2, § 26; 1988, ch. 139, § 3.

Cross-References. — Abandoned horses as nuisance, §§ 47-2-1 to 47-2-7.

NOTES TO DECISIONS**Running at large.**

The phrase “running at large” as applied to animals meant strolling about without re-

straint or confinement, roving or rambling at will. *Bountiful City v. De Luca*, 77 Utah 107, 292 P. 194, 72 A.L.R. 657 (1930).

COLLATERAL REFERENCES

Am. Jur. 2d. — 4 Am. Jur. 2d Animals §§ 46 to 48.

C.J.S. — 3A C.J.S. Animals §§ 123 to 136.
Key Numbers. — Animals ☞ 58 to 65.

4-25-2. County responsibility for estrays — Contracts with other local governments authorized.

Each county is responsible for the disposition of all estrays found within its boundaries. Each county in the discharge of its responsibility, however, may contract upon mutually agreeable terms with any city, town, or other county with an animal control office to perform any or all of the functions imposed by this chapter.

History: C. 1953, 4-25-2, enacted by L. 1979, ch. 2, § 26; 1983, ch. 7, § 1.

Cross-References. — Cities' power to estab-

lish pounds and appoint poundkeepers, § 10-8-64.

4-25-3. Department authorized to make and enforce regulations.

The department is authorized, subject to the Utah [Administrative] Rulemaking Act, to make and enforce such regulations as in its judgment are necessary to administer and enforce this chapter.

History: C. 1953, 4-25-3, enacted by L. 1979, ch. 2, § 26.

Cross-References. — Utah Administrative Rulemaking Act, Title 63, Chapter 46a.

4-25-4. Possession of estrays — Determination and location of owner — Sale — Disposition of proceeds — Notice — Title of purchaser — Immunity from liability.

(1) Each county, except as otherwise provided in Section 4-25-5, shall take physical possession of any estray it finds within its boundaries and attempt to determine the name and location of the animal's owner. The department shall assist any county which requests its help in locating the name and location of the owner or other person responsible for such animal. If ownership of the estray cannot be determined, or, if having determined ownership, neither the county nor the department is able to locate the owner within a reasonable period of time, the animal, notwithstanding the Uniform Disposition of Unclaimed Property Act, shall be sold at a livestock or other appropriate market and the proceeds of such sale paid, after the deduction of feed, transportation, and market costs, to the county causing the sale of such estray.

(2) No sale of an estray under this section shall be conducted without notice of the intended sale being published at least once ten days before the date of sale in a publication with general circulation within the county where the estray was taken into custody.

(3) The purchaser of an estray sold under this section shall receive title to the estray free and clear of all claims of the owner and any person claiming through the owner.

(4) The county, provided it complies with this chapter, is immune from liability on account of any estray sold at a livestock or other appropriate market.

History: C. 1953, 4-25-4, enacted by L. 1979, ch. 2, § 26; 1981, ch. 6, § 1; 1983, ch. 7, § 2.

Compiler's Notes. — The Uniform Disposi-

tion of Unclaimed Property Act, cited in Subsection (1), was repealed by Laws 1983, ch. 164, § 1, which also enacted the Uniform Unclaimed Property Act, Title 78, Chapter 44.

NOTES TO DECISIONS

Statute to be strictly followed.

Laws providing for the restraint, sale, or disposal of animals for trespass and damage

must be strictly followed. *Nielsen v. Hyland*, 51 Utah 334, 170 P. 778 (1918).

4-25-5. Report of estrays — Possession — Relief from liability.

(1) Any person, other than an official of the county or of an animal control office under contract with the county, who finds an estray shall report such fact to the county or animal control office immediately. The county or the animal control office upon receipt of notification shall either take possession of the estray or, if deemed appropriate, authorize the person in possession of the estray to maintain and care for it pending determination and location of its owner.

(2) Any person who gives notice of an estray and delivers it to the county or animal control office is relieved of all liability to third persons on account of the estray to the extent of the value of the animal.

History: C. 1953, 4-25-5, enacted by L. 1979, ch. 2, § 26; 1983, ch. 7, § 3.

4-25-6. Compensation for care of estrays — Liability of county — Notice required.

(1) A person who finds an estray and who, after giving notice is authorized by the county to maintain and care for it, is entitled to compensation from the owner, or from the county, as the case may be, for the reasonable costs of feeding and maintaining the animal; provided, that the county is liable for such cost only if the owner is not located after diligent search.

(2) No person who finds an estray however, is entitled to reimbursement for feed and maintenance or for any other cost incurred on behalf of the estray before such time as notice of the estray is given to the county or to the appropriate animal control office.

History: C. 1953, 4-25-6, enacted by L. 1979, ch. 2, § 26; 1983, ch. 7, § 4.

4-25-7. County legislative body authorized to adopt fence ordinance in derogation of common law — Lawful fence to be specified by ordinance.

The county legislative body of any county is authorized through ordinance to declare and enforce a general policy within the county for the fencing of farms, subdivisions, or other private property, to allow domestic animals to graze without trespassing on farms, subdivisions, or other private property. If such

an ordinance is adopted, the county legislative body shall through ordinance declare and specify what constitutes a lawful fence.

History: C. 1953, 4-25-7, enacted by L. 1979, ch. 2, § 26; 1988, ch. 139, § 4; 1993, ch. 227, § 7.

Amendment Notes. — The 1993 amendment, effective May 3, 1993, substituted "county legislative body" for "board of county commissioners" in both sentences.

Cross-References. — Division fences, contribution by adjoining landowners, § 4-26-5.

Fencing railroads for protection of livestock, §§ 56-1-13, 56-2-6 to 56-2-12.

Throwing down fence or failure to close gates a misdemeanor, damages, § 4-26-4.

COLLATERAL REFERENCES

Am. Jur. 2d. — 4 Am. Jur. 2d Animals §§ 49 to 54.

C.J.S. — 3A C.J.S. Animals §§ 139 to 141, 151 to 156.

A.L.R. — Liability for killing or injuring, by motor vehicle, livestock or fowl on highway, 55 A.L.R.4th 822.

Validity of statutes requiring the construction of fences — modern cases, 87 A.L.R.4th 1129.

Key Numbers. — Animals ⇨ 92.

4-25-8. Owner liable for trespass of animals — Exception — Intervention by county representative.

(1) The owner of any neat cattle, horse, ass, mule, sheep, goat, or swine that trespasses upon the premises of another person, except in cases where the premises are not enclosed by a lawful fence in a county or municipality which has adopted a fence ordinance, is liable in a civil action to the owner or occupant of the premises for any damage inflicted by the trespass.

(2) A county representative may intervene to remove the animal and the county is entitled to fair compensation for costs incurred. If the animal is not claimed within one week after written notification is sent to its owner, a county representative may sell the animal to cover costs incurred.

History: C. 1953, 4-25-8, enacted by L. 1979, ch. 2, § 26; 1988, ch. 139, § 4.

NOTES TO DECISIONS

ANALYSIS

Constitutionality.
Absolute liability.
Common law.
Defenses.
Grazing unit.
Injunction.
Instructions.
Intent of owner.
Liability under fence law.
Measure of damages.
Rights of one in unlawful possession.
Swine.
Who is "occupant."

Constitutionality.

This section does not violate federal or state constitutional due process provisions by placing

liability for trespassing cattle on the owners of such cattle in a county without a fence ordinance. *Bastian v. King*, 661 P.2d 953 (Utah 1983).

Section 41-6-38, restricting livestock on highways, and this section do not unconstitutionally discriminate among similarly situated plaintiffs in actions involving unrestricted livestock merely because each provision imposes a different burden of proving liability. The legislature reasonably could have concluded that people's interest in crops, fences and even personal security on their own land is both greater and different in kind than travelers' interest in safety on the highway. *Vanderwater v. Hatch*, 835 F.2d 239 (10th Cir. 1987).

Absolute liability.

Former section did not lay down mere rule of

reasonable care on part of owners of domestic animals enumerated, but imposed rule of absolute liability, although owner was not liable for every trespass committed by such animals upon land of another, such as where trespass was fault of landowner. *Nelson v. Tanner*, 113 Utah 293, 194 P.2d 468 (1948).

Common law.

Former section was in conformity with the common law, requiring every owner to restrain his animals within his own lands. *Mower v. Olsen*, 49 Utah 373, 164 P. 482 (1917).

The plain purpose of former section was to adopt the common-law rule of liability against the owners of trespassing animals, but to permit such localities as might desire a different rule to adopt a fence law. *Winters v. Turner*, 74 Utah 222, 278 P. 816 (1929), appeal dismissed for want of jurisdiction and cert. denied, 281 U.S. 692, 50 S. Ct. 238, 74 L. Ed. 1121 (1930).

Defenses.

Owner of swine was not liable for trespass committed by them upon plaintiff's adjoining land if joint fence was hog-tight and swine escaped only because plaintiff's irrigation water eroded passageway under fence, or if plaintiff damaged fence in such manner that swine could pass through, under or over it, or if plaintiff drove such swine onto his own land; defense was an affirmative one to be raised by defendant. *Nelson v. Tanner*, 113 Utah 293, 194 P.2d 468 (1948).

Grazing unit.

Federal government was not liable for unauthorized grazing by third parties' cattle upon land of plaintiff where government permitted third parties to graze cattle on government land of a grazing unit which consisted of land belonging to plaintiff, government, and third parties. *Kunzler v. United States*, 208 F. Supp. 79 (D. Utah 1961), appeal dismissed, 307 F.2d 511 (10th Cir. 1962).

Injunction.

Injunction, in addition to judgment in plaintiff's favor for damages for the trespasses sued for, is not appropriate when the injunction would be likely to reach further than the protection of the plaintiff's lands. *Winters v. Turner*, 74 Utah 222, 278 P. 816 (1929), appeal dismissed for want of jurisdiction and cert. denied, 281 U.S. 692, 50 S. Ct. 238, 74 L. Ed. 1121 (1930).

Instructions.

Instructions, in action for damages for trespass by defendant's swine upon plaintiff's land, that person having possession or control of pigs only has duty to use reasonable care and diligence to prevent them from escaping their enclosure or entering upon or doing damage to

land of others, and is not liable if such care and diligence have been exercised, were erroneous as misconception of duty and liability. *Nelson v. Tanner*, 113 Utah 293, 194 P.2d 468 (1948).

Instruction that defendant would be liable for damages to plaintiff's land caused by defendant's failure to exercise reasonable care and diligence in caring for his swine unless plaintiff was himself negligent in failing to discharge some duty resting upon him and such negligence proximately contributed to produce trespass and its consequent damage was erroneous as permitting jury to speculate that plaintiff might have had duty and that he might have breached it. *Nelson v. Tanner*, 113 Utah 293, 194 P.2d 468 (1948).

Jury could not reasonably find from evidence that plaintiff either expressly or impliedly consented to trespass of defendant's swine upon his land during year in question, and consequently instruction with respect thereto was unsupported by evidence. *Nelson v. Tanner*, 113 Utah 293, 194 P.2d 468 (1948).

Intent of owner.

In the absence of a local fence law the owner of cattle, turning them loose on his own lands, knowing that they would drift and graze upon unimproved and uninclosed public lands, as well as upon uninclosed lands in private ownership, was liable in trespass for the consequent damages. It was unnecessary to show a willful or intentional trespass. *Winters v. Turner*, 74 Utah 222, 278 P. 816 (1929), appeal dismissed for want of jurisdiction and cert. denied, 281 U.S. 692, 50 S. Ct. 238, 74 L. Ed. 1121 (1930). This case was expressly reaffirmed in *Livingston v. Thornley*, 74 Utah 516, 280 P. 1042 (1929).

Liability under fence law.

Where a fence law was in force, sheep owner was not liable for damages caused by inadvertent intrusion of his sheep on uninclosed lands but was liable when he willfully drove his sheep onto such land. *Jones v. Blythe*, 33 Utah 362, 93 P. 994 (1908).

Willful and intentional trespass gave rise to liability without regard to question of fences. *Mower v. Olsen*, 49 Utah 373, 164 P. 482 (1917).

If defendant was notified to keep his cattle off plaintiff's lands and by reasonable investigation could have ascertained the boundaries of those lands, he was liable if he thereafter suffered or permitted his cattle to trespass thereon. *Hall v. Bartholomew*, 51 Utah 279, 169 P. 943 (1917).

Measure of damages.

The measure of damages in action under former section was not limited to value of forage eaten and destroyed, but could have included reasonable rental value of land upon which trespass was committed. *Anderson v.*

Jensen, 71 Utah 295, 265 P. 745 (1928).

Rights of one in unlawful possession.

One in unlawful possession of land could not claim damages under estray law for trespassing animals. Therefore if one unlawfully fenced in government land with his own, he could not impound cattle which had been turned inside of his inclosure by the owners. *Taylor v. Buford*, 8 Utah 113, 29 P. 880 (1892).

Swine.

Owner of swine had absolute duty to restrain them from going upon lands of another, including plaintiff's adjoining land, and it was not sufficient that joint fence was reasonably ad-

equate to restrain swine since, if they could in fact avoid restraint of fence by rooting under it, fence was not adequate and owner would be liable for any damage done to plaintiff's land. *Nelson v. Tanner*, 113 Utah 293, 194 P.2d 468 (1948).

Who is "occupant."

One who purchased lucerne seed from owner of lands and left it in inclosed field to dry held "occupant" of premises as to entitle him to recover damages for injury done to seed by trespassing animals, without alleging and proving negligence. *Peterson v. Petterson*, 39 Utah 354, 117 P. 70 (1911).

COLLATERAL REFERENCES

Am. Jur. 2d. — 4 Am. Jur. 2d Animals §§ 112 to 118.

C.J.S. — 3A C.J.S. Animals §§ 137, 138, 166, 167.

A.L.R. — Liability for injury to trespassing stock from poisonous substances on the pre-

mises, 12 A.L.R.3d 1103.

Liability for personal injury or death caused by trespassing or intruding livestock, 49 A.L.R.4th 710.

Key Numbers. — Animals ⇌ 89 to 100.

4-25-9. Animals running at large — Prohibition — Limited exception.

No person who owns or is in possession of a stallion, jack, or ridgeling over 18 months old, or a ram over three months old, shall permit it to run at large within the limits of, or on the summer range of, any town or settlement; provided, that two-thirds of the voters of any county or isolated part of a county may elect through an election to make this section ineffective in all or part of the county during part of the year.

History: C. 1953, 4-25-9, enacted by L. 1979, ch. 2, § 26.

Cross-References. — Livestock on high-

way, restrictions, action for collision, § 41-6-38.

Railroad, fencing of right-of-way, gates, §§ 56-1-13, 56-2-6 to 56-2-12.

COLLATERAL REFERENCES

Am. Jur. 2d. — 4 Am. Jur. 2d Animals § 40.

C.J.S. — 3A C.J.S. Animals §§ 137 to 150.

Key Numbers. — Animals ⇌ 47 to 50.

4-25-10. Bulls — Number required on range during breeding season.

No person during breeding season shall turn loose or range any cattle upon a federal range or forest reserve located in this state without ranging one bull for every 30 head of female breeding cattle ranged; provided, that a person ranging any portion of 30 head of female breeding cattle may arrange for an interest in a bull which is ranging on the federal range or the forest reserve where such breeding cattle are located.

History: C. 1953, 4-25-10, enacted by L. 1979, ch. 2, § 26.

4-25-11. Determination and enforcement of bull running policy by range association.

A local range association may determine and enforce a general policy regarding the type and quality of bulls allowed to run at large upon a community allotment of public lands located in this state.

History: C. 1953, 4-25-11, enacted by L. 1988, ch. 139, § 5.

Repeals and Reenactments. — Laws 1988, ch. 139, § 5 repeals former § 4-25-11, as

enacted by Laws 1979, ch. 2, § 26, relating to the ranging of purebred bulls, and enacts the present section, effective April 25, 1988.

4-25-12. Permitting swine to trespass after notice — Class “C” misdemeanor.

The owner or person in control of any swine that permits it to trespass upon the improved private property of another person within three days after receipt of written notice demanding that the owner or person in control prevent further trespass is guilty of a class “C” misdemeanor; provided, that the owner or person in control of the swine is entitled to a reasonable time after notice for removal of the trespassing animal.

History: C. 1953, 4-25-12, enacted by L. 1979, ch. 2, § 26.

Cross-References. — Sentencing for misdemeanors, §§ 76-3-201, 76-3-204, 76-3-301.

COLLATERAL REFERENCES

C.J.S. — 3A C.J.S. Animals § 169.

Key Numbers. — Animals ☞ 102.

4-25-13. Repealed.

Repeals. — Section 4-25-13 (L. 1979, ch. 2, § 26), making violation of the chapter a class

“B” misdemeanor, was repealed by Laws 1985, ch. 104, § 8.

CHAPTER 26

DEAD ANIMALS — ENCLOSURES AND FENCES

Section		Section	
4-26-1.	Dead domestic animals — Duty of owner to bury or otherwise dispose of them — Liability for costs.	4-26-4.	Failure to close entrance to enclosure — Class “C” misdemeanor — Damages.
4-26-2.	Dead animals — Deposit on another's land prohibited.	4-26-4.1.	Release of fur-bearing animals — Penalty — Treble damages.
4-26-3.	Penalty.	4-26-5.	Adjoining landowners — Partition fences — Contribution.

4-26-1. Dead domestic animals — Duty of owner to bury or otherwise dispose of them — Liability for costs.

It is the responsibility of the owner or other person responsible for any domestic animal which dies to bury or otherwise dispose of it within two days after death. If the owner or other person responsible for such an animal cannot be found, it is the duty of the county, city, or town within which the dead animal is found, at such political subdivision's expense, to bury the dead animal. A county, city, or town which incurs expense under this section is entitled to reimbursement from the owner of the dead animal.

History: C. 1953, 4-26-1, enacted by L. 1979, ch. 2, § 27.

Cross-References. — Infected swine carcass, disposal, § 4-31-12.

COLLATERAL REFERENCES

Am. Jur. 2d. — 4 Am. Jur. 2d Animals § 26.
C.J.S. — 62 C.J.S. Municipal Corporations § 215.

Key Numbers. — Municipal Corporations ⇨ 608.

4-26-2. Dead animals — Deposit on another's land prohibited.

No person shall deposit a dead animal upon the land of another person without the latter's consent.

History: C. 1953, 4-26-2, enacted by L. 1979, ch. 2, § 27.

4-26-3. Penalty.

Any person who violates Section 4-26-1 or 4-26-2 is guilty of a class "C" misdemeanor.

History: C. 1953, 4-26-3, enacted by L. 1979, ch. 2, § 27.

Sentencing for misdemeanors, §§ 76-3-201, 76-3-204, 76-3-301.

Cross-References. — Carcass of dead animal, wrongful disposition of, misdemeanor, § 76-10-805.

4-26-4. Failure to close entrance to enclosure — Class "C" misdemeanor — Damages.

Any person who willfully throws down a fence or opens bars or gates into any enclosure other than the person's own enclosure or into any enclosure jointly owned or occupied by such person and others, and leaves it open is guilty of a class "C" misdemeanor, and is also liable in damage for any injury sustained by any person as a result of such an act.

History: C. 1953, 4-26-4, enacted by L. 1979, ch. 2, § 27.

Cross-References. — County fencing ordinances, § 4-25-7.

Destruction of fence on private land unlawful, § 23-20-15.

Mining shafts, fencing of, § 76-10-401.

Sentencing for misdemeanors, §§ 76-3-201, 76-3-204, 76-3-301.

COLLATERAL REFERENCES

Am. Jur. 2d. — 35 Am. Jur. 2d Fences §§ 33 to 45.

C.J.S. — 36A C.J.S. Fences §§ 16 to 18.

4-26-4.1. Release of fur-bearing animals — Penalty — Treble damages.

(1) Any person who intentionally and without permission of the owner releases any fur-bearing animal raised for commercial purposes is guilty of a class B misdemeanor.

(2) Any person convicted of releasing a fur-bearing animal as set forth in Subsection (1) is liable for treble damages in a civil action.

History: C. 1953, 4-26-4.1, enacted by L. 1990, ch. 125, § 1; 1991, ch. 241, § 1; 1992, ch. 62, § 1; 1993, ch. 4, § 5.

Amendment Notes. — The 1991 amendment, effective April 29, 1991, substituted "class B" for "class A."

The 1992 amendment, effective April 27,

1992, added the Subsection (1) designation and Subsection (2).

The 1993 amendment, effective May 3, 1993, deleted a comma after "person" in Subsection (2).

Cross-References. — Sentencing for misdemeanors, §§ 76-3-201, 76-3-204, 76-3-301.

4-26-5. Adjoining landowners — Partition fences — Contribution.

If two or more persons agree to a fence enclosure or to the construction of a partition fence, the cost of construction and maintenance of the fence shall be apportioned between each party to the agreement based upon the amount of land enclosed. A person who is a party to such agreement and who fails to maintain such person's part of the fence is liable in a civil action for any damage sustained by another party to the agreement as a result of the failure to maintain the fence. If a person has enclosed land with a fence and the owner of adjoining land desires to enclose land adjoining the fence so that the existing fence or any part of it will become a partition fence between such tracts of land, the owner of the adjoining land shall before making the enclosure pay to the owner of the existing fence one-half of the value of all that part of the fence that will become a partition fence; and when one party ceases to improve or cultivate his land or opens his enclosure he must not take away any part of the partition fence belonging to him, if the owner or occupant of the adjoining enclosure within 30 days after notice, pays for the value of such fence; nor shall the partition fence be removed if the crops enclosed by it will be exposed to injury.

History: C. 1953, 4-26-5, enacted by L. 1979, ch. 2, § 27.

NOTES TO DECISIONS

ANALYSIS

Action for damages.
Boundary line.

Action for damages.

An action to recover damages for a failure to keep in repair a partition fence was authorized. *Lindley v. Bradshaw*, 45 Utah 83, 141 P. 300 (1914).

Boundary line.

The middle of the fence was the true bound-

ary line in absence of any proof to the contrary. *Rich v. Stephens*, 79 Utah 411, 11 P.2d 295 (1932).

Former section applied to land occupied by the boundary fence as well as to the material used in its construction. *Rich v. Stephens*, 79 Utah 411, 11 P.2d 295 (1932).

Trees standing on a boundary line between adjoining owners were the common property of both owners who were tenants in common as to the trees. *Robins v. Roberts*, 80 Utah 409, 15 P.2d 340 (1932).

COLLATERAL REFERENCES

Am. Jur. 2d. — 35 Am. Jur. 2d Fences §§ 13, 22, 23.

C.J.S. — 36A C.J.S. Fences §§ 10 to 12.

A.L.R. — Fence as factor in fixing location of boundary line — modern cases, 7 A.L.R.4th 53.

Encroachment of trees, shrubbery, or other vegetation across boundary line, 65 A.L.R.4th 603.

Sufficiency of showing, in establishing boundary by parol agreement, that boundary was uncertain or in dispute before agreement, 72 A.L.R.4th 132.

Key Numbers. — Fences ⇐ 12, 15.

CHAPTER 27

INSEMINATION OF DOMESTIC ANIMALS

(Repealed by Laws 1983, ch. 3, § 1.)

4-27-1 to 4-27-10. Repealed.

Repeals. — Sections 4-27-1 to 4-27-10 (L. 1979, ch. 2, § 28; 1980, ch. 1, § 3), relating to

artificial insemination of domestic animals, were repealed by Laws 1983, ch. 3, § 1.

CHAPTER 28

BRUCELLOSIS ERADICATION AND CONTROL

(Repealed by Laws 1983, ch. 5, § 7; 1984, ch. 2, § 1.)

4-28-1 to 4-28-11. Repealed.

Repeals. — Sections 4-28-1 to 4-28-8, 4-28-10, and 4-28-11 (L. 1979, ch. 2, § 29; 1980, ch. 1, §§ 4 to 6; 1982, ch. 2, § 2; 1983, ch. 5, §§ 1 to 6), relating to brucellosis eradication and con-

trol, were repealed by Laws 1984, ch. 2, § 1.

Section 4-28-9 (L. 1979, ch. 2, § 29; 1980, ch. 1, § 7), relating to quarantined feedlots, was repealed by Laws 1983, ch. 5, § 7.

CHAPTER 29

DISEASES OF POULTRY

Section		Section	
4-29-1.	Department authorized to make and enforce regulations.	4-29-4.	Hatchery — License required to operate.
4-29-2.	Restrictions on importation of chickens, turkeys, chicks, turkey poults, and hatching eggs — Certificate to accompany shipment — Disposition of nonconforming shipments.	4-29-5.	License — Application — Fee — Expiration — Renewal.
4-29-3.	Results of negative agglutination blood test filed with department.	4-29-6.	Enforcement — Inspection of premises where poultry raised.
		4-29-7.	Repealed.

4-29-1. Department authorized to make and enforce regulations.

The department is authorized, subject to the Utah [Administrative] Rulemaking Act, to promulgate regulations deemed necessary for the administration and enforcement of this chapter.

History: C. 1953, 4-29-1, enacted by L. 1979, ch. 2, § 30.

Cross-References. — Utah Administrative Rulemaking Act, Title 63, Chapter 46a.

COLLATERAL REFERENCES

Am. Jur. 2d. — 4 Am. Jur. 2d Animals § 32.
C.J.S. — 3 C.J.S. Animals §§ 66 to 68.
A.L.R. — Keeping poultry as nuisance, 2 A.L.R.3d 965.

Key Numbers. — Animals ⇌ 29.

4-29-2. Restrictions on importation of chickens, turkeys, chicks, turkey poults, and hatching eggs — Certificate to accompany shipment — Disposition of nonconforming shipments.

(1) No chickens, turkeys, chicks, turkey poults, or hatching eggs to be used for breeding purposes shall be imported to this state, or sold by hatcheries or others within this state unless they originate from flocks participating in the pullorum control and eradication phase of the National Poultry Improvement Plan, or the National Turkey Improvement Plan, or have passed a negative agglutination blood test for pullorum disease administered under the supervision of the department within 12 months prior to the date of sale.

(2) Baby chicks, turkey poults, or hatching eggs to be used for purposes other than breeding shall not be imported to this state, or sold by hatcheries or others within this state unless they originate from flocks participating in the pullorum control and eradication phase of the National Poultry Improvement Plan, or the National Turkey Improvement Plan, or have passed a negative agglutination blood test for pullorum disease administered under supervision of the department within 12 months prior to the date of sale.

(3) A certificate issued by the appropriate authority of the "state of origin" shall accompany each shipment of hatching eggs, baby chicks, poults, started

chicks, started poults, or chicken or turkey breed stock imported to this state. The certificate shall specify that the contents of the shipment is free of pullorum or other poultry disease, the name and address of the consignee in this state, the name and address of the person who consigned the poultry for shipment, the name of the certifying authority in the state of origin, and the date the test or inspection for pullorum was performed by such authority.

(4) The department may seize and destroy any shipment of chickens, chicks, turkeys, poults, or hatching eggs transported into this state in contravention of this section without notice to the person who consigned the poultry for shipment to this state, or it may return the contents of the shipment to such person at the latter's expense.

History: C. 1953, 4-29-2, enacted by L.
1979, ch. 2, § 30.

4-29-3. Results of negative agglutination blood test filed with department.

The results of each negative agglutination blood test for pullorum disease performed at a hatchery in Utah shall be certified and a copy of the test results filed with the department.

History: C. 1953, 4-29-3, enacted by L.
1979, ch. 2, § 30.

4-29-4. Hatchery — License required to operate.

No person shall operate a hatchery or offer any chicks, poults, or hatching eggs for sale in this state without a license issued by the department.

History: C. 1953, 4-29-4, enacted by L.
1979, ch. 2, § 30.

4-29-5. License — Application — Fee — Expiration — Renewal.

Application to operate a hatchery or to engage in the business of selling chicks, poults, or hatching eggs shall be made to the department upon forms prescribed and furnished by it. Upon receipt of a proper application and payment of a license fee in an amount determined by the department pursuant to Subsection 4-2-2(2), the commissioner, if satisfied that the convenience and necessity of the industry and the public will be served, shall issue a license entitling the applicant to engage in the otherwise proscribed activity through December 31 of the year in which the license is issued. A hatchery license is annually renewable on or before December 31 of each year upon the payment of an annual license renewal fee in an amount determined by the department pursuant to Subsection 4-2-2(2).

History: C. 1953, 4-29-5, enacted by L.
1979, ch. 2, § 30; 1984 (2nd S.S.), ch. 15,
§ 18; 1985, ch. 130, § 15.

4-29-6. Enforcement — Inspection of premises where poultry raised.

(1) The department shall have access to all hatcheries or other places in the state where poultry is raised for the purpose of inspecting the premises for conditions related to the control of pullorum or other poultry disease.

(2) If admittance is refused, the department may proceed immediately to obtain an ex parte warrant from the nearest court of competent jurisdiction to allow entry upon the premises for the purpose of making the inspection.

History: C. 1953, 4-29-6, enacted by L. 1979, ch. 2, § 30.

Cross-References. — Enforcement of Agricultural Code, § 4-1-4.

4-29-7. Repealed.

Repeals. — Section 4-29-7 (L. 1979, ch. 2, § 30), making violation of the chapter a class

"B" misdemeanor, was repealed by Laws 1985, ch. 104, § 8.

CHAPTER 30

LIVESTOCK MARKETS

Section		Section	
4-30-1.	Definition.	4-30-6.	Livestock Market Committee — Guidelines delineated for decision on application.
4-30-2.	Livestock Market Committee created — Composition — Terms — Removal — Compensation — Duties.	4-30-7.	Transfer of livestock market license permitted — Conditions.
4-30-3.	Department authorized to make and enforce regulations.	4-30-8.	Weighman license required — Application — Fee — Bond — Expiration — Renewal.
4-30-4.	License required — Application — Fee — Expiration — Renewal.	4-30-9.	Suspension or revocation of license — Grounds.
4-30-5.	Hearing on license application — Notice of hearing.		

4-30-1. Definition.

For the purpose of this chapter "livestock market" means a public market place consisting of pens or other enclosures where all classes of livestock or poultry are received on consignment and kept for subsequent sale, either through public auction or private sale; but it does not mean:

(a) a place used solely for liquidation of livestock by a farmer, dairyman, livestock breeder, or feeder who is going out of such business; or

(b) a place where an association of livestock breeders or an individual livestock breeder offers registered livestock or breeding sires for sale and assumes all responsibility for the sale, guarantees title to the livestock or sires sold, and arranges with the department for brand inspection of all animals sold.

History: C. 1953, 4-30-1, enacted by L. 1979, ch. 2, § 31.

Cross-References. — Brand inspection required for sale of livestock, fees, §§ 4-24-20, 4-24-21.

Ownership of livestock, proof required for sale, § 4-24-20.

Records required of livestock market owners or operators, § 4-24-19.

4-30-2. Livestock Market Committee created — Composition — Terms — Removal — Compensation — Duties.

(1) There is created a Livestock Market Committee which consists of the following seven members appointed to a four-year term of office by the governor:

- (a) the commissioner who serves as chairman;
- (b) one member recommended by the livestock market operators in the state;
- (c) one member recommended by the Utah Cattlemen's Association;
- (d) one member recommended by the Utah Dairymen's Association;
- (e) one member recommended by the Utah Woolgrowers' Association;
- (f) one member recommended by the horse industry; and
- (g) one member recommended by the Utah Farm Bureau Federation.

(2) No more than four members, exclusive of the commissioner, shall be members of the same political party.

(3) The governor may remove a member of the committee at the request of the association or group which recommended the member's appointment. The chairman is responsible for the call and conduct of meetings. Four members constitute a quorum for the transaction of official business. A member, other than the commissioner, is entitled to per diem and expenses at the rates established by the director of the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(4) The Livestock Market Committee acts as advisor to the department with respect to the administration and enforcement of this chapter and makes recommendations necessary to carry out the intent of this chapter to the commissioner.

History: C. 1953, 4-30-2, enacted by L. 1979, ch. 2, § 31; 1985, ch. 71, § 1; 1993, ch. 4, § 6; 1993, ch. 212, § 4.

Amendment Notes. — The 1993 amendment by ch. 4, effective May 3, 1993, added the (1) to (4) designations, redesignated former Subsections (1) to (7) as Subsections (1)(a) to (1)(g), deleted "in accordance with Section 63-2-15" after "expenses" and "by the director of the Division of Finance" after "established" in Subsection (3), and made stylistic changes.

The 1993 amendment by ch. 212, effective

May 3, 1993, divided the section into subsections, making related designation changes in Subsection (1), and substituted the language beginning "at the rates established" for "in accordance with Section 63-2-15" in the last sentence of Subsection (3).

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

Sunset Act. — See Section 63-55-204 for the repeal date of the Livestock Market Committee.

4-30-3. Department authorized to make and enforce regulations.

The department is authorized, subject to the Utah [Administrative] Rulemaking Act, to make and enforce such regulations as in its judgment are necessary to administer and enforce this chapter.

History: C. 1953, 4-30-3, enacted by L. 1979, ch. 2, § 31.

Cross-References. — Utah Administrative Rulemaking Act, Title 63, Chapter 46a.

4-30-4. License required — Application — Fee — Expiration — Renewal.

(1) No person may operate a livestock market in this state without a license issued by the department. Application for a license shall be made to the department upon forms prescribed and furnished by it. The application shall specify:

(a) the name and address of the applicant and a statement of the name and address of each person who has a financial interest in the applicant and the amount of such interest;

(b) a statement of the financial assets and liabilities of the applicant;

(c) a legal description of the property where the market is proposed to be located, its street address, and a description of the facilities proposed to be used in connection with it;

(d) a schedule of the charges or fees the applicant proposes to charge for each service rendered; and

(e) a detailed statement of the trade area proposed to be served by the applicant, the potential benefits which will be derived by the livestock industry, and the specific services the applicant intends to render at such market.

(2) Upon receipt of a proper application, payment of a license fee in an amount determined by the department pursuant to Subsection 4-2-2(2), and a favorable recommendation by the livestock market committee, the commissioner, if satisfied that the convenience and necessity of the industry and the public will be served, shall issue a license allowing the applicant to operate the livestock market proposed in the application valid through December 31 of the year in which the license is issued, subject to suspension or revocation for cause. A livestock market license is annually renewable on or before December 31 of each year upon the payment of an annual license renewal fee in an amount determined by the department pursuant to Subsection 4-2-2(2).

(3) No livestock market original or renewal license may be issued until the applicant has provided the department with a certified copy of a surety bond filed with the United States Department of Agriculture as required by the Packers and Livestock [Stockyards] Act (7 U.S.C. § 181 et seq.).

History: C. 1953, 4-30-4, enacted by L. 1979, ch. 2, § 31; 1980, ch. 1, § 8; 1984 (2nd S.S.), ch. 15, § 19; 1985, ch. 130, § 16.

4-30-5. Hearing on license application — Notice of hearing.

(1) Upon the filing of an application, the chairman of the Livestock Market Committee shall set a time for hearing on the application in the city or town nearest the proposed site of the livestock market and cause notice of the time and place of the hearing together with a copy of the application to be forwarded by mail, not less than 15 days before the hearing date, to the following:

(a) each licensed livestock market operator within the state; and

(b) each livestock or other interested association or group of persons in the state that has filed written notice with the committee requesting receipt of notice of such hearings.

(2) Notice of the hearing shall be published 14 days before the scheduled hearing date in a daily or weekly newspaper of general circulation within the city or town where the hearing is scheduled.

History: C. 1953, 4-30-5, enacted by L. 1979, ch. 2, § 31.

4-30-6. Livestock Market Committee — Guidelines delineated for decision on application.

The Livestock Market Committee in determining whether to recommend approval or denial of the application shall consider:

- (1) the applicant's proven or potential ability to comply with the Packers and Stockyards Act;
- (2) the financial stability, business integrity, and fiduciary responsibility of the applicant;
- (3) the livestock marketing benefits which potentially will be derived from the establishment and operation of the public livestock market proposed;
- (4) the need for livestock market services in the trade area proposed;
- (5) the adequacy of the livestock market location and facilities proposed in the application, including facilities for health inspection and testing;
- (6) whether the operation of the proposed livestock market is likely to be permanent; and
- (7) the economic feasibility of the proposed livestock market based on competent evidence.

Any interested person may appear at the hearing on the application and give an opinion or present evidence either for or against granting the application.

History: C. 1953, 4-30-6, enacted by L. 1979, ch. 2, § 31.

Federal Law. — The federal Packers and Stockyards Act is 7 U.S.C. § 181 et seq.

4-30-7. Transfer of livestock market license permitted — Conditions.

No livestock market license is transferable to another person without the prior approval of the commissioner. Application to allow transfer of a livestock market license shall be made to the department on a form prescribed and furnished by it. The commissioner may grant transfer of the license if the proposed transferee meets all the requirements and considerations specified for an original license in Subsection 4-30-4(3) and Section 4-30-5.

History: C. 1953, 4-30-7, enacted by L. 1979, ch. 2, § 31.

4-30-8. Weighman license required — Application — Fee — Bond — Expiration — Renewal.

(1) No person may act as a weighman at a livestock market without a license from the department. Application for a weighman's license shall be made to the department upon forms prescribed and furnished by it. Upon receipt of a proper application, payment of a license fee in an amount determined by the

department pursuant to Subsection 4-2-2(2), and deposit of either a corporate surety bond or trust fund agreement with the department in the principal amount of \$1,000, the commissioner shall issue a license allowing the applicant to act as a weighman through December 31 of the year in which the license is issued, subject to suspension or revocation for cause. A weighman's license is annually renewable on or before December 31 of each year upon the payment of an annual license renewal fee in an amount determined by the department pursuant to Subsection 4-2-2(2).

(2) Each weighman's surety bond shall be written by a surety licensed under the laws of Utah and name the state, as obligee, for the use and benefit of persons who consign livestock to a livestock market. The bond shall further be conditioned for the faithful and accurate weighing of livestock consigned to a livestock market, and for the payment of court costs and a reasonable attorney's fee to the prevailing party incident to any suit brought upon the bond.

History: C. 1953, 4-30-8, enacted by L. 1979, ch. 2, § 31; 1980, ch. 1, § 9; 1984 (2nd S.S.), ch. 15, § 20; 1985, ch. 130, § 17.

4-30-9. Suspension or revocation of license — Grounds.

The department is authorized to suspend or revoke the license of any livestock market or livestock market weighman who engages in any fraudulent or deceitful activity.

History: C. 1953, 4-30-9, enacted by L. 1979, ch. 2, § 31.

Cross-References. — Procedure for suspension or revocation of licenses, § 4-1-5.

CHAPTER 31

LIVESTOCK INSPECTION AND QUARANTINE

Section		Section	
4-31-1.	Outbreak of contagious or infectious disease — Assistance of federal authorities.		created — Exclusive use of revenue.
4-31-2.	Epidemic of contagious or infectious disease — Condemnation or destruction of infected or exposed livestock — Destruction of other property.	4-31-9.	Imported livestock and zoo animals — Certificate.
4-31-3.	Appraisal of fair market value before destruction.	4-31-10.	Imported swine — Quarantine period — Exceptions to quarantine.
4-31-4.	Slaughter for post-mortem examination.	4-31-11.	Restrictions on movement of swine — Swine feeder license — Restrictions on feeding garbage to swine.
4-31-5.	Imported dairy cattle — Tuberculosis certificates.	4-31-12.	Carcass of infected swine to be burned or buried.
4-31-6.	Dairy cattle subject to inspection for disease.	4-31-13.	Stockyards — Disinfection.
4-31-7.	Claims for indemnity for destroyed or slaughtered cattle.	4-31-14.	Restrictions on movement of infected or exposed domestic animals.
4-31-8.	Tuberculosis and Bangs Account	4-31-15.	Report of vesicular disease.
		4-31-16.	Contagious or infectious disease — Duties of department.